

## Federal Communications Commission

DA 98-1325

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 98-113
Table of Allotments,	)	RM-9296
FM Broadcast Stations.	)	
(Tumon, Guam)	)	

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FCC MAIL SECTION

NOTICE OF PROPOSED RULE MAKING

Adopted: July 1, 1998;

Released: July 10, 1998

Comment Date: August 31, 1998

Reply Comment Date: September 15, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Guam Broadcast Services, Inc. ("petitioner"), proposing the allotment of Channel 280A at Tumon, Guam, as the community's first local aural transmission service. Petitioner states his intention to apply for the channel, if allotted.

2. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes. See, e.g., Oak Grove, Florida, 5 FCC Rcd 3774 (1990); Hannibal, Ohio, 5 FCC Rcd 3315 (1990); and Statenville, Georgia, 5 FCC Rcd 2685 (1990). Tumon is not listed in the 1990 U.S. Census, and you have not shown that Tumon is an incorporated community, or has the requisite indicia to qualify as a "community" for allotment purposes. In the past, we have rejected claims of "community" status where a nexus has not been demonstrated between the political, social and commercial organizations and the community in question. See Gretna, et al, Florida, 6 FCC Rcd 633 (1991), and cases cited therein. Therefore, petitioner is requested to provide specific information to demonstrate whether Tumon has any commercial, social,

economic, cultural, or religious organizations, municipal services, or governmental units that identify themselves specifically with that locality.

3. We believe the proposal warrants consideration since the allotment of Channel 280A to Tumon, Guam, could provide the community with its first local aural transmission service, in the event Tumon is ultimately found to qualify as a "community" for allotment purposes. An engineering analysis has determined that Channel 280A can be allotted to Tumon in compliance with the Commission's minimum distance separation requirements at city reference coordinates.<sup>1</sup>

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Tumon, Guam	----	280A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before August 31, 1998, and reply comments on or before September 15, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Robert J. Rini, Esq.  
Rini, Coran & Lancellotta, P.C.  
1350 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036  
(Counsel for Petitioner)

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<sup>1</sup>The coordinates for Channel 280A at Tumon are North Latitude 13-30-25 and East Longitude 144-48-05.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

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APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.